

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PICTURE PATENTS, LLC,

Plaintiff,

V.

AEROPOSTALE, INC., DICK'S SPORTING GOODS, INC., CHARLOTTE RUSSE, INC., GSI COMMERCE SOLUTIONS, INC., FOGDOG, INC., GSI COMMERCE, INC., NATIONAL BASKETBALL ASSOCIATION, NBA PROPERTIES, INC., NBA MEDIA VENTURES, LLC, MAJOR LEAGUE BASEBALL PROPERTIES, INC., MLB ADVANCED MEDIA L.P., LINENS 'N THINGS, INC., TWEETER NEWCO, LLC, TWEETER OPCO, LLC and BUY.COM, INC.,

Defendants.

[illegible]

Civil Action No.
07CV5567 (JGK)(HP)

**DEFENDANT BUY.COM INC.'S ANSWER TO
THIRD AMENDED COMPLAINT AND COUNTERCLAIM**

For its answer to Plaintiff's Third Amended Complaint ("Complaint"), Defendant Buy.com, Inc. ("Buy.com") states as follows:

1. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 1 and therefore denies same.
2. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 2 and therefore denies same.
3. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 3 and therefore denies same.
4. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 4 and therefore denies same.

5. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 5 and therefore denies same.

6. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 6 and therefore denies same.

7. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 7 and therefore denies same.

8. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 8 and therefore denies same.

9. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 9 and therefore denies same.

10. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 10 and therefore denies same.

11. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 11 and therefore denies same.

12. Defendant Buy.com admits that it is a Delaware corporation and that it has its principal place of business in Aliso Viejo, California. The remaining allegations of paragraph 12 are denied.

13. Defendant Buy.com admits that this is an action for infringement arising under 35 U.S.C. §§ 271, 281, 283-85 et seq., but denies liability under any of those sections.

14. Defendant Buy.com admits that the Court has subject matter jurisdiction under 28 U.S.C. § 1338(a). The remaining allegations of paragraph 14 are denied.

15. Defendant Buy.com denies the allegations of paragraph 15.

16. Defendant Buy.com denies the allegations of paragraph 16.

17. Defendant Buy.com admits that U.S. Patent No. 6,278,455 (the '455 patent) for "Pictorial Interface for Accessing Information in an Electronic File System" issued on August 21, 2001 and that a copy of the '455 patent is attached as Exhibit A to the Third Amended Complaint. Defendant Buy.com denies that the '455 patent legally issued.

18. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 18 and therefore denies same.

19. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 19 and therefore denies same.

20. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 20 and therefore denies same.

21. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 21 and therefore denies same.

22. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 22 and therefore denies same.

23. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 23 and therefore denies same.

24. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 24 and therefore denies same.

25. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 25 and therefore denies same.

26. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 26 and therefore denies same.

27. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 27 and therefore denies same.

28. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 28 and therefore denies same.

29. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 29 and therefore denies same.

30. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 30 and therefore denies same.

31. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 31 and therefore denies same.

32. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 32 and therefore denies same.

33. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 33 and therefore denies same.

34. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 34 and therefore denies same.

35. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 35 and therefore denies same.

36. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 36 and therefore denies same.

37. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 37 and therefore denies same.

38. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 38 and therefore denies same.

39. Defendant Buy.com lacks sufficient information to form a belief as to the truth of the allegations in paragraph 39 and therefore denies same.

40. Defendant Buy.com denies the allegations of paragraph 40.

41. Defendant Buy.com denies the allegations of paragraph 41.

42. Defendant Buy.com denies the allegations of paragraph 42.

43. No response required.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

44. The '455 patent is invalid for failure to meet the requirements of 35 U.S.C. §§ 1 *et seq.*, including, but not limited to, 35 U.S.C. §§ 102 and 103.

SECOND DEFENSE

45. Plaintiff is not entitled to injunctive relief because any alleged injury to the Plaintiff is not immediate or irreparable, and Plaintiff has an adequate remedy at law.

THIRD DEFENSE

46. Plaintiff's claims are barred by laches.

FOURTH DEFENSE

47. Plaintiff lacks standing to sue.

FIFTH DEFENSE

48. Plaintiff is barred from recovering any damages prior to filing of suit because it failed to comply with the notice and marking requirements of 35 U.S.C. § 287.

OTHER DEFENSES

49. Defendant Buy.com reserves the right to assert additional affirmative defenses, including unenforceability, after further discovery.

BUY.COM'S COUNTERCLAIM

50. Defendant Buy.com, Inc. ("Buy.com") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 85 Enterprise, Suite 100, Aliso Viejo, California 92656.

51. On information and belief, Plaintiff Picture Patents LLC ("Picture Patents") is a Delaware corporation.

52. This Court has subject-matter jurisdiction over these counterclaims under 28 U.S.C. §§ 1331, 1338, 2201, and 2202, as they arise under an act of Congress relating to patents, 35 U.S.C. §§ 101 et seq.

NON-INFRINGEMENT AND INVALIDITY OF THE '455 PATENT

53. The '455 patent was issued on August 21, 2001 by the United States Patent and Trademark Office. Plaintiff Picture Patents claims to own all rights and interest in the '455 patent and the right to recover for past infringement.

54. Plaintiff Picture Patents LLC has asserted that Buy.com infringes the '455 patent. An actual controversy exists between Picture Patents LLC and Buy.com concerning the alleged infringement and invalidity of the '455 patent.

55. Buy.com has not and does not directly or indirectly infringe, contribute to, or induce infringement of the '455 patent.

56. The '455 patent is invalid for failing to meet one or more conditions of patentability set forth in Part II of Title 35 of the United States Code, including but not limited to sections 102 and 103.

PRAYER FOR RELIEF

FOR THESE REASONS, Buy.com respectfully requests that this Court enter judgment:

- a. dismissing Plaintiff's claims with prejudice;
- b. declaring that Buy.com has not infringed the '455 patent;
- c. declaring that the '455 patent is invalid;
- d. finding that this is an exceptional case;
- e. awarding Buy.com its costs, expenses, and reasonable attorneys' fees under 35 U.S.C. § 285, and all other applicable statutes, rules, and common law; and
- f. granting such other relief as the Court may deem appropriate and just under the circumstances.

Dated: April 16, 2008

Respectfully submitted,

/s/ John Driscoll

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Certificate Filed in New York County
Commission Expires *January 20, 2010*